

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EBONY D. WALKER,	:	
Plaintiff,	:	
v.	:	Case No. 3:15-cv-136
MEGAN KELLY JOYCE, <i>et al.</i> ,	:	JUDGE WALTER H. RICE
Defendants.	:	

DECISION AND ENTRY ADOPTING IN PART UNITED STATES
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC.
#17); OVERRULING PLAINTIFF'S OBJECTIONS THERETO (DOC. #23);
SUSTAINING DEFENDANT MONTGOMERY COUNTY'S MOTION TO
DISMISS (DOC. #14); DISMISSING CLAIMS AGAINST
MONTGOMERY COUNTY AND OFFICIAL CAPACITY CLAIMS
AGAINST DEFENDANTS JOYCE AND HATTON WITH PREJUDICE,
AND DISMISSING INDIVIDUAL CAPACITY CLAIMS AGAINST
DEFENDANTS JOYCE AND HATTON WITHOUT PREJUDICE;
JUDGMENT TO ENTER IN FAVOR OF DEFENDANTS AND AGAINST
PLAINTIFF; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE
TO APPEAL *IN FORMA PAUPERIS*; TERMINATION ENTRY

On November 16, 2015, Defendant Montgomery County filed a Motion to Dismiss Plaintiff's Amended Complaint. Doc. #14. On January 7, 2016, the Court ordered Plaintiff to show cause why the motion should not be granted as unopposed. Doc. #16. Plaintiff failed to respond.

On March 4, 2016, United States Magistrate Judge Michael J. Newman issued a Report and Recommendations, Doc. #17, recommending that Defendant Montgomery County's Motion to Dismiss be granted, that the claims against

Defendants Joyce and Hatton be dismissed, and that the case be terminated on the Court's docket. In the alternative, he recommended that Plaintiff's claims be dismissed for failure to prosecute. Thereafter, Plaintiff moved for an extension of time to respond to the Motion to Dismiss. Doc. #18. The Court granted Plaintiff's request and gave him until April 22, 2016, to file objections to the Report and Recommendations. Doc. #19.

When a copy of that Order was returned as undeliverable, the Court issued another Order, giving Plaintiff until April 25, 2016, to show cause why the case should not be dismissed for failure to prosecute. Doc. #21. Plaintiff then filed a response to the show cause order, Doc. #22, Objections to the Report and Recommendations, Doc. #23, a Motion for Leave to File Second Amended Complaint, Doc. #24, and Motion to Have a Personal Process Server, Doc. #25.

On July 8, 2016, Magistrate Judge Newman issued an Order and Entry denying Plaintiff's Motion for Leave to File Second Amended Complaint, denying Plaintiff's Motion to Have a Personal Process Server, and granting Plaintiff leave, *nunc pro tunc*, to file his objections to the Report and Recommendations. Doc. #26. Plaintiff has not appealed any aspect of the July 8, 2016, Order and Entry.

In his objections, to the March 4, 2016, Report and Recommendations, Plaintiff cites *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007), and summarily argues only that this is an "amendable action not worthy of dismissal." He makes no effort to address the legal reasons why Magistrate Judge Newman recommended that the Court dismiss the Amended Complaint. The Court further


notes that Magistrate Judge Newman has denied, as futile, Plaintiff's Motion for Leave to File Second Amended Complaint.

Based on the reasoning and citations of authority set forth by Magistrate Judge Newman in his Report and Recommendations, Doc. #17, as well as upon a thorough, *de novo* review of this Court's docket and the applicable law, the Court ADOPTS that judicial filing in part, and OVERRULES Plaintiff's objections thereto, Doc. #23. The Court: (1) SUSTAINS Defendant Montgomery County's Motion to Dismiss, Doc. #14, on the merits; (2) DISMISSES WITH PREJUDICE all claims against the county, and all official capacity claims against Defendants Joyce and Hatton; and (3) DISMISSES WITHOUT PREJUDICE all individual capacity claims against Defendants Joyce and Hatton. The Court need not reach Magistrate Judge Newman's alternative recommendation to dismiss Plaintiff's claims for failure to prosecute.

Judgment shall be entered in favor of Defendants and against Plaintiff. Pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies that an appeal of this Decision and Entry would not be taken in good faith and would be *objectively* frivolous. Accordingly, Plaintiff may not appeal *in forma pauperis*.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: August 2, 2016



WALTER H. RICE
UNITED STATES DISTRICT JUDGE